

Supreme Court of the United States
OCTOBER TERM, 1942

No.

GALBAN LOBO COMPANY, S. A.

Petitioner,

vs.

LEON HENDERSON, Price Administrator,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
EMERGENCY COURT OF APPEALS**

**BRIEF FOR PETITIONER GALBAN LOBO
COMPANY, S. A.**

Specification of Errors To Be Urged.

It is submitted that the United States Emergency Court of Appeals erred:

1. In holding that the protest and review provisions of the 1942 Act are not applicable to any transaction which occurred under Price Schedules prior to the enactment of the law.

2. In dismissing the complaint for want of jurisdiction.

Chronological Statement.

The chronology, which is pertinent in this case, is as follows:

Price Schedule No. 16 became effective August 14, 1941. The contract between petitioner and Imperial Sugar Company was made October 27, 1941, and was amended December 8, 1941. Delivery of the sugar took place on December 17, 1941 and January 2, 1942. The price ceiling was raised on January 3, 1942. The price was called on January 15, 1942. Amendment No. 3 of Price Schedule No. 16, which was relied upon by Imperial as a bar to payment of the called price was issued on January 26, 1942. The Emergency Price Control Act of 1942 became effective on January 30, 1942. The refusal of Imperial to pay the contract price is dated February 9, 1942, and the petition was filed March 2, 1942.

AUTHORITIES AND ARGUMENT

I.

The language of the Emergency Price Control Act of 1942 expressed the intention of Congress that its remedial provisions should be applicable to transactions arising under the Price Schedules issued prior to the enactment of the law.

In the Act and in Procedural Regulation No. 1 the term "Price Schedule" is used to apply to those schedules which were issued by the Price Administrator prior to the enactment of the law; and the term "price regulation" is used to refer to regulations or other maximum price orders issued after the enactment of the law.

Section 1300.1, subdivisions (d) and (e), respectively, of Procedural Regulation No. 1, define these terms as follows:

"d. The term 'maximum price regulation' means any regulation or order establishing a maximum price or

prices as defined in Section 302(i) of the Act, except that the term shall not include a 'price schedule' or 'temporary maximum price regulation' as defined below."

"e. The term 'price schedule' means any price schedule establishing a maximum price or prices issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to February 11, 1942, the date upon which the Administrator took office under the Act."

Section 203(a) of the Act, providing for protest, reads as follows:

*"Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any person subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. * * ** (Italics ours.)

Section 206 of the Act reads as follows:

"Saving Provisions. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration

or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office."

Pursuant to the provisions of Section 206, the Administrator provided in Section 1300.44 of Procedural Regulation No. 1, as follows:

"Protest of Price Schedule. (a) Any provision of a price schedule shall be subject to protest within a period of 60 days after February 11, 1942: *Provided, however,* That any protest based solely on grounds arising after the expiration of such 60 days may be filed at any time after the grounds for such protest arise.

(b) A protest to a provision of a price schedule shall be filed, considered, and determined in the same manner as provided for the protest of maximum price regulations by §§1300.9 to 1300.34 inclusive, of this Regulation (§§1300.1 to 1300.56, inclusive)."

The Act and Regulations thus evidence an intent that the Price Schedules after re-publication should be subject to protest within a sixty day period from their effective date, namely, February 11, 1942.

The Court below has construed these provisions as limiting the right to protest to matters arising after February 11th. There is nothing in the Act to support such a limited construction.

Congress, in Section 203(a) of the Act plainly defined two classes of protest: (1) those based upon grounds arising *at any time* prior to the expiration of a period of sixty days following the issuance of any Price Regulation or order, or following the effective date of a Price Schedule, and (2) those based upon grounds arising thereafter.

In respect to the first class of protest, the Court below has said that the time provided for the beginning of the statute of limitations was intended to be limited to grounds for protest arising after February 11, 1942. The language does not warrant such construction and no purpose is to be served by it. There would have been no point to the inclusion of the provision relating to protests in the "saving provisions" of Section 206 if the Congress had intended to limit protests to grounds arising after the Act.

Had Congress intended to leave persons affected by acts of the Administrator under the Price Schedules to their prior existing remedies at law, the detailed provisions of Sections 203(a) and 206, for the saving of the right of protest and review, would have been unnecessary. Simple and logical draftsmanship would have provided for a single class of protest, based only on grounds arising after the effective date of the Price Schedules, to be filed within sixty days after the grounds have arisen.

The observation of the Court below that petitioner's argument involves a "retroactive" application of the law, which is not to be presumed without clear evidence to the contrary, overlooks the fact that petitioner has invoked only the remedial provisions of the law. Retroactive application of such remedial provisions is not unusual and does not require an unqualified expression of legislative intent.

The entire scope and setup of the Act shows that Congress wanted to concentrate in the Emergency Court of Appeals all matters relating to price control, and the review of all orders of the Administrator relating thereto. The action of the Court below seems to be contrary to the Congressional scheme, and therefore should not be sustained.

CONCLUSION.

For the reasons above set forth, the judgment of the Court below was erroneous, and it is therefore respectfully submitted that a writ of certiorari to said Court should be granted herein.

Respectfully submitted,

BAER & MARKS,

Attorneys for Petitioner;

By DONALD MARKS.

Dated: New York, N. Y., October 26, 1942.

DONALD MARKS,

JULIUS B. BAER,

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Of Counsel.